

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE**

IN THE MATTER OF INTEGRATED RESOURCE )  
PLANNING FOR THE PROVISION OF )  
STANDARD OFFER SUPPLY SERVICE BY )  
DELMARVA POWER & LIGHT COMPANY UNDER )  
26 DEL. C. § 1007(c) & (d): REVIEW ) PSC DOCKET NO. 06-241  
AND APPROVAL OF THE REQUEST FOR )  
PROPOSALS FOR THE CONSTRUCTION OF )  
NEW GENERATION RESOURCES UNDER 26 )  
DEL. C. § 1007(d) )  
(OPENED JULY 25, 2006)

**Memorandum of Jeremy Firestone in Reply to Conectiv, NRG and Bluewater  
Wind's Objections to Motion for Entry of a Protective Order**

**Introduction**

On December 28, 2006, I requested access to all “non-public” information as that term is used in PSC rule 11(e). On January 18, 2007, I filed “Response to Request for Access to Confidential Information and Motion for Entry of a Protective Order.” This matter was scheduled for hearing on February 7, 2007, and said hearing took place on that day.

By letter dated January 12, 2007, Conectiv claimed that such material is subject to inspection under rule 11(e) but only in a “contested case.” By letter dated February 6, 2007, NRG endorsed Conectiv’s view and, making analogies to the standards for intervention, suggested I should not have access to the materials. NRG also claimed that my interests were adequately represented by the four state agencies. NRG expressed the fear that if I had access any member of the public could have access. On the day of the hearing, Bluewater Wind filed a memorandum adopting NRG’s position, but in addition,

argued that I was not a party; that I did not have standing, citing Delaware and U.S. case law; and that I did not have a “direct interest” within the meaning of Commission Rule 2.

As demonstrated below, the Commission and the bidders acquiesced in the staff decision to grant me intervention, and thus, I am a party to this proceeding. Second, Bluewater’s reliance on both Delaware and US Case Law is misplaced—those cases address standing to sue in court rather than standing to participate in an administrative proceeding (and even if standing to sue was at issue the Delaware case construes a more restrictive standing requirement for appeal of DNREC permits than that provided for Commission orders) and the federal case cited is not the most definitive pronouncement of federal standing. Third, Bluewater over-relies on Rule 2’s definition of party, as that definition must be read *in pari materi* with the definition of intervenor and the Rule 21’s standard for intervention. When the proper standard is applied it is readily apparent that I meet the requirements for intervention. Lastly, there is simply no support for Conectiv’s hope that rule 11(e) is limited to “contested cases,” as Commission Rule 1 makes clear that the rules apply to all proceedings (this is not further addressed herein).

**1. The Commission and the Bidders Acquiesced in the Staff Decision to Grant Me Intervention.**

In September 2006, I was preparing a draft Motion to Reschedule the Commission proceedings in this matter to provide additional time for the public to review the independent consultant’s report. Although the Commission rules provide specific procedures for intervention, given the manner in which the docket had been proceeding up to that point, by email dated September 25, 2006, I asked Robert Howatt, the Commission staff member assigned to this matter, and Karen Nickerson, Secretary to the

Commission, what procedures I should follow to intervene to become a party and how I should go about serving the motion. Mr. Howatt responded later that day, copying Ms. Nickerson, and noting that: “All interested parties who have provided comment are ‘official’ parties to the proceeding.”

On September 27, 2006, I filed my “Motion to Rescheduled Commission Hearing,” and served members of the service list by email. Paragraph 21 of that Motion provided that:

By email dated September 25, 2006, Robert Howatt indicated that all “interested parties who have provided comment are “official” parties to the proceeding. It is not necessary to serve copies of all correspondence on the parties as we have been posting all materials to the PSC Website and will continue to do so.

Thus, with the filing of that Motion all of the bidders, the Public Advocate, the Commission staff’s counsel, and the Commission were apprised of the fact that Mr. Howatt indicated that I was an “official party” to the proceeding.

A hearing was held on that Motion on October 3, 2006. The transcript of that hearing is illuminating. First, the question of my intervention status was discussed in a colloquy between Commissioner Winslow and me.

“COMMISSIONER WINSLOW: ... Does the legislation involved here [HB 6] give the public any right to public input before the RFP is produced....?”

MR. FIRESTONE: Well, I would submit that the legislation, per se, does not, but the proceeding – certainly parties would have the right to intervene and participate in the proceeding. ... I was also informed – I asked whether I had to officially intervene to file a motion, but I was told by the Commission Staff that all parties that were participating and submitting comments were now parties to the proceeding, as far as Staff is concerned.

COMMISSIONER WINSLOW: So, the process itself, as set up by this Commission's Order No. 7003, gives you and others the right to participate in this process. Correct?

MR. FIRESTONE: That's Correct."

Transcript October 3, 2006, pp. 198-199. That my status would be discussed is not surprising given that by the Commission's own rules, only parties may present motions to the Commission under Commission Rule 19.

Subsequently, on October 30, Willett Kempton and I filed Objections to Entry of Order, which was heard by the Commission on October 31, 2006. At that time, no one suggested that we were not parties. Willett Kempton and I later filed a Motion for Reconsideration and Rehearing, and I argued that lengthy motion before the Commission on December 19, 2006. Only parties are permitted to file reconsideration and rehearing motions under Commission Rule 34(b). Again, neither Mr. Geddes, nor the bidders, nor the Public Advocate nor any members of the Commission, questioned, let alone suggested, that Willett Kempton and I were not parties to this proceeding.

During that hearing there was also a colloquy between Commissioner Clark and me regarding why we chose to seek rehearing rather than appeal the order to the Superior Court.

COMMISSIONER CLARK: You are petitioning for rehearing. You didn't appeal...?

MR. FIRESTONE: Correct.

COMMISSIONER CLARK: ... I'm trying to understand why if you disagree with something here, you didn't file an appeal and how the petition for rehearing fits into that.

MR. FIRESTONE: Why we [Willett Kempton and I] didn't go to court at that point?

COMMISSIONER CLARK: Well –

MR. FIRESTONE: I mean, I wanted to give this body an opportunity to correct what we thought was an error before we took the next step.

Transcript, December 19, 2006, pp. 661-662. Thus, we were clearly discussing why Willett Kempton and I had chosen to proceed as parties under Commission Rule 34 rather than under Title 26, Section 510 of the Delaware Code (providing for appellate rights for original parties and intervenors).

At the December 19, 2006 hearing, Bluewater Wind also argued its emergency motion regarding the project size permitted. During that argument, as befits a party, I was recognized by the Chair. There I argued that Delmarva's contention that Bluewater Wind's motion was time-barred was unavailing in part because Bluewater Wind was not asking the Commission to reconsider and rehear its prior decision, but was merely seeking clarification as to the meaning of the Commission earlier Order. *Id.* at 712. My argument carried the day on that issue, opening the way for the Commission to consider the merits of Bluewater Wind's claim.

“COMMISSIONER WINSLOW: I adopt Mr. Firestone's argument that it's a point of clarification with respect to the language and not a motion for anything else.”

*Id.* at 749. Apparently, when it suits Bluewater's interest I am a party; when it does not, I am not. Bluewater Wind and the other bidders should not now be heard to claim I am not a party in this matter.

On January 18, I filed the present motion under debate—that is my request for access to confidential information. Then on January 29, 2007, I filed a Motion to determine the validity of assertions to confidentiality in the bids. Both of those motions were heard on February 6, 2007. While the Commission deferred consideration of the first, it effectively granted the relief I requested under the second motion. It then dismissed the second motion without prejudice, thus once again signifying that I am a party to this proceeding. Moreover at that hearing, the Commission Chair distinguished me from Alan Muller, of Green Delaware, when she refused to recognize Mr. Muller, noting that oral proceeding was not an opportunity for members of the public—that is, non-parties to speak.

Pursuant to Rule 33(a), Commission Orders have been served on me, including one order which was served by certified mail. I also have filed comments, reply comments and comments on the redline RFP and participated in the all day hearing on the draft RFP. Of the motions, etc. heard by the Commission (exclusive of the all day October 17 hearing) in this matter, five have been put forward by me (two of which Willett Kempton joined in) and one by Bluewater Wind (in which I was recognized to speak and my argument on a procedural point carried the day). Given the facts in this case, the bidders should be estopped from claiming that I am not a party to this proceeding.

Moreover, putting aside the Public Advocate and the bidders, my participation has clearly been at a level that distinguishes me from every other person, except perhaps, Willett Kempton (who has not asked for access to the confidential information). All of

this suggests that the real issue is not whether I am a party to this proceeding, but whether I should have access to confidential information under Commission Rule 11(e).

**2. Bluewater Wind Relies on the Wrong Standard for Participation in an Administrative Proceeding before the Commission.**

Bluewater Wind relies on Dover Historical Society v. City of Dover Planning Commission, 838 A. 2d 1103 (Del. Supr. 2003); Oceanport Industries v. Wilmington Stevedores, 636 A.2d 892 (Del. Supr. 1994); and Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992). A review of these cases, however, reveals that Bluewater's discussion of Dover Historical Society is misleading; the test relied on in Ocean Industries is the wrong test; and Lujan must be read in light of other more recent U.S. Supreme Court pronouncements on standing.

First, Bluewater Wind states that Dover Historical Society stands for the proposition that a "general grievance shared by the population at large cannot be the basis for standing." Bluewater Wind at p. 2. When one looks at what the Delaware Supreme Court said in context it is clear that it the proposition is much less than it first appears.

In this case, the Superior Court properly noted "that a generalized grievance shared by the population at large cannot be a basis for standing." But, as the United States Supreme Court has held, the fact that a grievance is widely held does not make it abstract and not judicially cognizable if individual plaintiffs can demonstrate a concrete and particularized injury. Most significantly, however, the United States Supreme Court has held that aesthetic injuries can constitute an injury in fact that is sufficient to support a plaintiff's standing.

838 A.2d. at 1113. In coming to the conclusion that individual standing to sue is met as long as an individual can demonstrate a concrete and particularized injury, the Delaware

Supreme Court cited, Friends of the Earth, Inc., v. Laidlaw Environmental Services, 528 U.S. 167 (2000), a more recent U.S. Supreme Court precedent than *Bluewater* relies on and which explains its early holding in Lujan.

It also worth noting that Delaware Supreme Court granted the individual plaintiffs standing in Dover Historical Society despite the fact that the subject of their grievance—the effect the construction project would have on aesthetics (the integrity and cohesiveness of a historical district)—was felt by Dover citizens generally. Indeed, that “interest by the general public . . . does not render those same aesthetic concerns any less concrete and particularized” to the plaintiffs.” 838 A.2d. at 1114. See also Oceanport Industries, 636 A.2d at 899, noting that the Supreme Court had moved away from the requirement that the injury differ from that of the public at large to a “zone of interests” test (that is, that interest sought to be protected is within the zone of interests sought to be protected or regulated by the statute in question). Thus, not only is Delaware case law less than *Bluewater* makes it seem, it supports my position.

Second, *Bluewater* cites Oceanport Industries for the proposition that Delaware applies a test for standing to sue under Delaware law that is similar to the federal test for standing. True enough, as far as standing to **sue** goes under the **particular statute at issue** in the case. But *Bluewater* neglects what Oceanport Industries makes clear—that the test to establish standing to **intervene into an administrative matter** under Delaware law is entirely different than the test to sue when that same person seeks to appeal the results (that is, a final administrative decision such as an administrative order) of that same administrative matter to a court of law. Indeed, in Oceanport Industries the Delaware Supreme Court was careful to distinguish the “minimal standing requirement” imposed



on the general public “for involvement in hearings during the [environmental] permit process,” with the “more stringent ‘substantially affected’ test of the standing to appeal and sue and that were ultimately at issue in that case. Id. at 900-901. The same is true here. The Commission has established minimal requirements under rule 21 for citizen involvement in administrative proceedings in contrast to the more stringent requirement established by the Legislature to appeal a Commission decision—that is, that the party or intervenor has been “affected” by a Commission decision. Title 26 Section 510.

### **3. I meet the test of Intervention into a Commission Administrative Proceeding**

There are two definitions set forth in Commission Rule 2 that are relevant here—the definitions of “party” and “intervenor.”

“Party” - a person who, as a matter of right or by Commission authorization, appears in and has a direct interest in a proceeding before the Commission.

“Intervenor” - a person who is admitted as a party pursuant to Rule 21 of these rules.

And of most relevance is Commission Rule 21(a), which provides in pertinent part that:

#### **RULE 21. Petitions for Leave to Intervene**

(a) Any person, other than an original party to a proceeding or a party entitled to participate as a matter of right, must file a petition to intervene. Such petition shall set forth in numbered paragraphs the following:

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(ii) a description of the petitioner’s interest in the outcome of the proceeding;

(iii) a concise statement of why the petitioner’s interest will not be adequately represented by the parties to the proceeding or why participation in the proceeding would be in the public interest;

Readings these three provisions together suggests that the “direct” interest test in the definition of “party” is met for an intervenor if that individual has an interest and (a) that interest will not be adequately represented by the “parties” to the proceeding **OR** (b) it would be in the public interest for that individual to participate in the proceedings. Even assuming for the sake of argument that a “direct” interest is required beyond having an “interest” and meeting (a) or (b), I easily meet that test as well, as is documented in subsection A. below. For the reasons provided next, I have a direct interest and satisfy not just one, but both of the alternative standards established under (2).

A. I have a direct interest in the proceeding

I have a direct interest because:

1. I own a home in New Castle County and am a Delmarva customer and ratepayer.
2. My electricity rates increased approximately 60 percent during the past year. Long term stable prices are important to me.
3. Reliable supply of electricity is especially important to me because I rely on electricity for not only light, heating (I need it to run the electrical motor on my furnace), cooking and cooling, but for water (I need it to run the pump on my well) as well.
4. Since 1999 I have rented beach houses along the eastern seaboard for three extend periods (for a period of one month, one week and one week).
5. I enjoy recreating at the beach in Delaware. I picnic, walk and run barefoot along the beach, play with my step-sons on the beach and in the ocean, swim in the ocean, look for shells, and observe marine mammals from the beach. Beach aesthetics are important to me.
6. In addition to beachgoing in Delaware, I have been to the beach in neighboring states from which the Bluewater Wind farm might be visible.
7. I enjoy canoeing and kayaking. I have kayaked on lakes and in the open ocean. I have canoed on lakes and in rivers.

8. I have hiked in the area of Delaware that abuts Delaware Bay and have gone on an excursion in Cape May county (both wetland areas) for the purpose of viewing wildlife, including migratory birds.
9. I am a member of the Delaware Nature Society and Friends of White Clay Creek State Park.
10. I have had asthma for about 40 years and a runner for about 30 years. Air quality, including levels of volatile organic compounds and particulate matter that may be discharged into the atmosphere from a new source of power, are thus of particular importance to me.
11. I am also concerned with contaminants that may ultimately end up in the water supply, and as a result, I installed a reverse osmosis system on my home drinking water supply.
12. The burning of fossil fuels for electricity generation results in approximately 40% of human-induced atmospheric CO<sub>2</sub>.
13. The Intergovernmental Panel on Climate Change (IPCC) recently issued its 4th climate change assessment. The IPCC concluded that it is very likely (>90% chance) the humans have caused climate change through the discharge of CO<sub>2</sub> and other greenhouse gases into the atmosphere. The burning of fossil fuels very likely will lead to further sea level rise, more intense hurricanes, droughts and massive species extinctions.
14. The projected rise in sea level will overrun most of Delaware's coastal wetlands within this century, and all of Delaware's beaches after this century.
15. It is increasingly likely that burning of fossil fuels if not checked will lead to the melting of the Greenland ice cap (which is up to 2 miles thick in places) and perhaps the West Antarctic Ice sheet. The melting of the Greenland ice cap will result in an increase in sea level of approximately 23 feet. If this were to happen Delaware would change as we know it, with obliteration of all of Delaware beaches, leaving an archipelago left in its place. (see e.g., <http://co2.cms.udel.edu/>).
16. The changes that are occurring now as a result of CO<sub>2</sub> emissions are affecting my recreational and other interests and well-being. For example, (a) there are impacts to glaciers in Glacier National Park, a park I have visited in the past and intend to visit in the future; (b) changes in climate may impact my ability to cross-country ski in White Clay State Park which surrounds my neighborhood; and (c) I have existence and other non-use values associated with Polar Bears, which are presently candidate species to be included as a threatened species under the Endangered Species Act.

17. The burning of fossil fuels is also leading to acidification of the ocean, which has significant implications for fisheries and other sea life.
18. My diet for most of the past 25 years I have eaten a diet centered on fish, grains, fruits, vegetables and milk products. The quantity, which also bears on price, and quality (including being free of contaminants) of fish is important to me.
19. Fossil fuel power plants result in millions of fish deaths each year through entrainment, impingement and the discharge of cooling water.
20. Depending on the choice of power supply, my recreational, aesthetic, health and economic interests, including my well-being, will be affected.

B. My interests will not be (and have not been) adequately represented by any other party

NRG and Bluewater suggest that I do not need to be a party because my interests are adequately represented by the four state agencies. As NRG and Bluewater well know, however, the standard is not whether decisionmakers adequately represent my interests, but rather, whether a “party” adequately represents my interests. As for “parties,” it cannot be seriously argued that Delmarva Power, Bluewater, NRG or Conectiv adequately represent and protect my interests. That leaves only the Public Advocate. For the reasons set forth next, the Public Advocate has not and will not adequately represent my interests.

1. The mission of the Public Advocate is to “advocate the lowest reasonable rates for consumers consistent with the maintenance of adequate utility service and consistent with an equitable distribution of rates among all classes of consumers.” 29 Del.C. Section 8716.
2. The Public Advocate is especially concerned with the impact of electricity rates on the elderly and disadvantaged, neither of which I am. See <http://www2.state.de.us/publicadvocate/aboutagency.shtml>.
3. As set out in paragraphs A1-A20 above, my interests are significantly broader than the mission and interests of the Public Advocate.

4. While I commend the Public Advocate for the work it does in general and the work it has done in this proceeding, it is readily apparent from the docket in this proceeding that the Public Advocate cannot and has not adequately represented my interests, but rather, as is appropriate, has focused on its narrower mission and interests.

5. The Public Advocate has not supported all of the positions I have taken in writing or at oral argument before the Commission.

C. My involvement would be in the public interest given my specialized expertise in these matters.

Lastly, my involvement in this matter has and will continue to be in the public interest. Indeed, I have been effectively participating as a free expert consultant to the Commission and DNREC in this matter and my participation has benefited the public.

1. I have a B.S. in Cellular and Molecular Biology from the University of Michigan, a Juris Doctorate from the University of Michigan Law School, and a Ph.D. in Public Policy Analysis from the University of North Carolina at Chapel Hill. My CV can be found at [www.ocean.udel.edu/cms/jffirestone](http://www.ocean.udel.edu/cms/jffirestone).<sup>1</sup>
2. For my dissertation, I examined compliance and enforcement in U.S. EPA's of clean air, clean water and hazardous waste programs.
3. I practiced as a natural resources and environmental lawyer for a total of 10 years, first for the U.S. EPA and then for the State of Michigan. I worked on hazardous waste cleanup, solid waste landfill regulation, hazardous waste facility regulation, wetlands, submerged lands regulation, fish kills, natural resource damage claims, and hydroelectric dam regulation.
4. As a lawyer I drafted legislation and rules and represented state agencies before state and federal trial and appellate courts and in administrative hearings.
5. I first worked on energy issues in the early 1990s, working on FERC regulatory matters. I appeared in numerous proceedings before FERC on behalf of the State of Michigan and in one case before the D.C. Circuit Court of Appeals.
6. As part of my FERC work, I negotiated a national-precedent setting settlement with a utility regarding the relicensing of eleven hydroelectric dams, where the

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<sup>1</sup> Information on my present employment, and activities related thereto, is presented only for the purpose of establishing that my involvement in this matter is in the public interest. It does not imply that my participation as a party in this matter has or will be on behalf of the University of Delaware. Rather, I participate as an individual.

main issues included fish entrainment and passage, natural resource damages, water quality (temperature and dissolved oxygen), and dam retirement funding.

7. I subsequently worked as a consultant for the University of North Carolina Environmental Finance Center on state and local involvement in hydroelectric dam relicensing proceedings.
8. I have done consulting work for the U.S. Commission on Ocean Policy.
9. I am a recognized expert on offshore windpower policy and co-lead a offshore windpower research group and oversee master's theses and Ph.D. dissertations related thereto at the University of Delaware. That work can be found at [www.ocean.udel.edu/windpower](http://www.ocean.udel.edu/windpower).
10. I published three articles on offshore windpower policy and a report on public opinion in Delaware.
11. I have received federal, state and university grants to conduct research on offshore windpower policy.
12. I am a regular reviewer of articles submitted for publication in the international peer review journal Energy Policy.
13. I have made invited presentations on offshore wind power at Woods Hole Oceanographic Institute and Princeton University and will be making one later this month at the University of Houston Law School conference on wind power and biofuels. I also have made presentations to the Minerals Management Service. Finally I made presentation at WINDPOWER 2006 and was asked to organize and lead a panel on offshore windpower at the most recent biennial conference of the Coastal Society.
14. I teach a course on U.S. Ocean and Coastal Law, which includes coastal zone management, fisheries, endangered species, marine mammals, and offshore energy regulation, among other topics.
15. I co-teach a course on Offshore Windpower: Science, Engineering and Policy.
16. I attended the recent environmental monitoring results conference in Denmark that concerned the impacts of two utility-scale offshore wind farms. I also toured one of the offshore wind farms.
17. In the past I taught a course on Natural Resources Law at Duke University and a course on Ethics in Public Policy Decisionmaking at the University of North Carolina.

18. I am a member of an Advisory Panel to the Mid-Atlantic Fishery Management Council's Protected Resources Committee.
19. Based on my research on ship collisions with North Atlantic Right Whales I have specialized knowledge of marine mammal migration in the mid-Atlantic and have made presentations on the same to NOAA and at conferences in the United States and Europe.
20. I have an article will be published by a peer review journal this year on regulating noise pollution (including noise from wind turbines) in the marine environment.
21. I am overseeing work by a graduate student on an article on the regulation of incidental migratory bird deaths.
22. My involvement in the proceedings to date has been in the public interest.
23. My efforts (along with those of others) have led to changes in the manner in which the bids will be evaluated and extent to which the public will be involved in and have input into the decision by the four state agencies, as evidenced by:
  - a. Bidding points moving from price to environmental impacts
  - b. Bidding points moving from price to price stability
  - c. Letters submitted in this matter by State Treasurer Jack Markell, the League of Women Voters and others either directly or indirectly supporting the positions I have advocated.
  - d. The RFP process including town meetings. During a conference call organized by Senior Hearing Examiner O'Brien on the IRP schedule, I made that suggestion, a suggestion which grew out of Commission staff's proposal for such meetings as part of the IRP process.
  - e. After receiving the FOIA response letter to the News Journal accompanying copies of the redacted bids—a letter in which the onus was put on the News Journal to challenge the redactions to the extent the newspaper was not satisfied—I filed a motion challenging the same and requested the Commission to commence a proceeding to require the bidders to justify their redactions and for the Commission to determine the legality of the same. At the February 6, 2007 hearing the Commission agreed that that the bidders should review their redactions to determine if they had been over-zealous and justify any remaining redactions, with the Commission to consider this matter further on February 27.

In sum, it would do a great disservice to exclude me from this proceeding. As Senator Bunting stated at the hearing on February 6, 2007, the decision before the Commission and other state agencies on the power bids is not one to be taken lightly as it will impact future generations of Delawareans. In a similar vein, State Treasurer Jack Markell urged the Commission to err on the side of more disclosure rather than less. Even Bluewater Wind whose 11th hour argument resulted in this reply has advocated for an open process. The Commission should follow these leads, and to paraphrase Treasurer Markell, should err on the side of more participation rather than less. It should not close these proceedings to the five state agencies, Delmarva power and the three power bidders, but rather should allow persons like me to continue to raise points not raised by the State agencies, the Public Advocate, Delmarva Power or the bidders, and to shed the full public light on these proceedings.

### Conclusion

In this reply I have addressed why I am a party to this proceeding and should continue to be considered as such. This question is factually and legally separate, and indeed, precedes any decision on whether, if I am a party, I am entitled under rule 11(e) to confidential records. It is improper to conflate these two questions as the issue of whether I am a party or not determines whether and how I may participate in these proceedings on issues beyond the rule 11(e) question such as filing motions and making oral argument before the Commission and the other three state agencies. Given that individuals other than Willett Kempton have shown no interest in participating as a party to date (as opposed to making comments), and that no other person has shown interest in



access to the confidential materials despite my first raising this issue more than a month ago, and that disclosure to me under a protective order would not harm the competitive interest of any of the bidders (when challenged at the February 6 hearing, none of the bidders substantiated any such harm), at the end of the day the debate over whether or not I am a party has generated much heated discussion, but sheds little light on the real issue presented—the obligation of the bidders to share confidential information with interested parties under rule 11(e).

I thus respectfully request that Conectiv, NRG and Bluewater Wind each renounce and repudiate any effort to have me barred from these proceedings and make a filing agreeing not to further contest my standing to participate in the RFP administrative process, and, along with this Honorable Commission, join me in the spirit of an open process.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jeremy Firestone". The signature is fluid and cursive, with the first name "Jeremy" written in a larger, more prominent script than the last name "Firestone".

Jeremy Firestone  
13 February 2007